

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2042 of 2021

(Assigned)

With

CRAN 13 of 2023

Sukhdeb Saha

Vs.

The State of West Bengal & Ors.

For the petitioner : Mr. Sabir Ahmed,
Mr. Suman Biswas,
Mr. Dhiman Banerjee.

For the State/opposite party no. 2 : Mr. Madhusudan Sur,
Mr. Dipankar Paramanick.

For the Opposite Party No. 3 : Mr. Jayanta Narayan Chatterjee,
Ms. Moumita Pandit,
Mr. Supreem Naskar,
Ms. Jayashree Patra,
Ms. Ritushree Banerjee,
Ms. Pritha Sinha.

Hearing concluded on : 08.01.2024

Judgment on : 10.01.2024

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred praying for quashing of the FIR being Bidhannagar South P.S. FIR No. 209 of 2021, u/s 420/406/120B/34 of IPC, dated 22.07.2021, corresponding to G.R. Case No. 815 of 2021, arising out of M.P. Case No. 37 of 2021, now pending before the Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas.
2. The petitioner's case is that on 14.08.2016 the petitioner was duly elected as the General Secretary of the I.A. Block Residents' Forum, Salt Lake having its registered office at I.A.-23A, Bonochaya, I.A. Park, Sector- III, Salt Lake City, P.S. - Bidhannagar South, Kolkata - 700 097 and had been discharging his duties with outmost sincerity and integrity without any objection whatsoever.
3. The Petitioner further states that the Executive Committee of the IA Block Residents' Forum was last formed on 07.08.2019 as the annual general meeting for 2020 could not be called due to Covid-19 Pandemic and imposition of nationwide lockdown. However, after the lockdown process, the Petitioner had issued a notice dated 13.12.2020 calling for the AGM of the I.A. Block Residents' Forum.
4. The General Secretary of the Forum then issued another notice that AGM of the Forum will held on 14.02.2021.
5. Thereafter, one of the Members of the said Association i.e Pinaki Mitra, had filed a Title Suit being T.S. No. 65 of 2021, before the Learned Civil Judge (Jr. Division) at Bidhannagar, interalia praying for Decree of Declaration that the Notice of AGM dated 14.02.2021, is

illegal, invalid and not according to the constitution of the Forum, with an application under order 39 Rule 1 & 2 interalia praying for interim Injunction.

6. The Learned Court after considering the matter, vide order dated 12.02.2021, was pleased to direct both the parties to the suit to maintain status quo in respect of nature, Character and possession of the suit property till 18.03.2021.
7. Upon receipt of the copy and communication the petitioner had also issued an Urgent Notice thereby postponing the AGM 2020, scheduled to be held on 14.03.2021, due to the Order of Status Quo passed by the Learned Court.
8. On 14.02.2021 the opposite party no.3 along with local insurgent members of the block by forceful means, by use of coercion and pressure conducted the AGM on 14.02.2021, and even formed a committee, in gross violation of the order of Status Quo passed by the Learned Court on 12.02.2021.
9. They had purportedly selected themselves as the Office Bearers of the Executive Committee of the I.A. Block Residents' Forum. A purported resolution was also passed recording that consequent upon expiry of the term of the existing executive committee on 31.03.2020, the said persons are elected as the new Executive Committee members for the ongoing term staring from 01.04.2020. The signature of the petitioner and the president was obtained in such purported resolution by use of force and coercion. However, it can be seen, from such purported resolution adopted in the illegal convent AGM dated 14.02.2021, that

the aforesaid persons had admittedly accepted the petitioner as the General Secretary of the Forum/Association.

- 10.** Challenging such illegal and purported AGM held on 14.02.2021, the Petitioner herein filed a Title Suit before the Learned Civil Judge Junior Division at Salt Lake (Bidhannagar) being T.S. No. 81 of 2021, praying for:-

- a. A decree for declaration that the purported AGM held on 14.02.2021 is null and void being done in violation of a subsisting order of injunction dated 12.02.2021 passed in T.S. No. 65 of 2021, among other reliefs prayed for.

- 11.** On 26.02.2021 the application under Order 39 Rule 1 & 2 of the Code of Civil Procedure, 1908 in T.S. 81 of 2021 was taken up for consideration on 26.02.2021. After hearing, the Learned Judge refused to grant an ad interim order of injunction.

- 12.** On appeal, before the Learned Additional District and Session Judge, 7th Court, Barasat, the prayer of the Petitioner for grant of an ad interim order of injunction was also refused.

- 13.** Challenging the same, the petitioner preferred a Civil Revisional Application before the Hon'ble High Court at Calcutta being C.O. No. 784 of 2021, where the Hon'ble High Court vide order dated 12.04.2021, disposed of the Misc. Appeal interalia directing that:-

“.....However this court is not going into the discussion on the facts and the merits of the pleadings of either of the parties because this court is of the opinion that the learned Trial Judge should be directed to expeditiously

dispose of the injunction application in view of the fact situation where a functioning of a society is involved and accounts etc. are also relevant considerations.

It is made clear that the petitioner/plaintiff shall not handle any of the accounts till the disposal of the application for injunction. Without going into further consideration of the case of the rival parties, the learned Trial Judge is directed to dispose of the injunction application within a period four weeks from date.....”

14. It is submitted by **Mr. Sabir Ahmed, learned counsel for the petitioner** that till date the injunction petition has not been disposed of.
15. It is further submitted by Mr. Ahmed that as directed by the Hon’ble High Court vide order dated 12.04.2021 in C.O. 784 of 2021 the petitioner is till date not handling any of the accounts.
16. The petitioner states that the dispute is civil in nature and the same is subjudice before the appropriate forum.
17. Learned counsel for the State has placed the case diary, which shows that the case ended in a charge sheet.
18. **Mr. Jayanta Narayan Chatterjee, learned counsel for the opposite party no. 3/complainant** has submitted that the first complaint by the complainant/opposite party no. 2 herein had been filed before the Bidhannagar Police Station, North 24 Parganas, on 28.02.2021. Thereafter on 01.03.2021 the applicant lodged the second complaint before the Commissioner of Police, Bidhannagar Police Commissionerate. But as no concrete steps had been taken, the applicant herein filed a complaint dated 24.06.2021 under Section

156(3) of the Code of Criminal Procedure, 1973 before the Learned Additional Chief Judicial Magistrate Bidhannagar, North 24 Parganas.

19. On the other hand, Mr. Ahmed for the petitioner has brought the notice of this Court to the order dated 24.06.2021 of the learned ACJM, Bidhannagar passed in G.R. 815 of 2021.
20. Vide the said order, the learned Magistrate directed the police officer concerned **to enquire into the matter and send a report.**
21. 23.07.2021 was fixed for compliance (submission of enquiry report).
22. **The endorsement on the petition under 156(3) Cr.P.C. is as follows:-**

*“Received on 22/7/21 at 11.10 hrs and started
BDN(S) PS Case No. 209/21 on 22.7.21 u/s
420/406/120B/34 IPC.”*

23. **Thus from the said copy of the petition bearing the said endorsement, it is evident that there was no enquiry report submitted before the Court on 23.07.21. The copy also bears the endorsement/signature in initials of the learned Magistrate dated 23.07.21 (on date fixed for enquiry report), when the petition on starting the specific case without the direction of the Magistrate was filed before the Court.**
24. **It thus appears that without filing the enquiry report as directed by the learned Magistrate, the police directly registered a case, without there being any direction by the Magistrate for registration of a case.**
25. **Thus it is clear that the registration of the present case is not in compliance to the direction of the Magistrate and thus not in**

accordance with law, which prima facie appears to be an abuse of the process of law/Court.

26. It is further seen that a title suit being T.S. 65 of 2021 was filed by a member of the association, where in the Court vide an order dated 12.02.2021 directed both parties to maintain status quo.
27. The petitioner too filed a Title Suit being no. 81 of 2021 on **25.02.2021.**
28. The present case was registered on **22.07.2021**, though the complainant/opposite party submits that his first complaint was made on 28.02.21, **which too was after the petitioner had already filed the Title Suit (81/2021).**
29. **In the present case,** the dispute between the parties relates to the Management of the office/affairs of the Association “IA Block Residents’ Forum” at (IA-23A ‘Banachhaya’, ‘IA Park’), Section III, Salt Lake City, P.S.-Bidhannagar, (South) Kolkata-97. The dispute is for control of the affairs of the Association and the powers that comes with it.
30. The dispute includes, the election of the members/office bearers of the forum, discharge of the functions of the association/forum including managing its accounts etc. The allegations against the petitioner includes defalcation.
31. **The Supreme Court in several precedents has discouraged such criminal proceedings initiated by the complainant only to harass the other party.** Some of the rulings are as follows:-

- a) *M/s. Indian Oil Corporation vs. M/s NEPC India Ltd. & Ors., Appeal (crl.) 834 of 2002 decided on 20.07.2006 (Para 8, 9, 10).*
- b) *Birla Corporation Ltd. vs Adventz Investments and holdings, (Criminal Appeal No. 877 of 2019) (Para 86).*
- c) *Mitesh Kumar J. Sha vs. The State of Karnataka & Ors. (Criminal Appeal no. 1285 of 2021) (Para 37, 41, 42).*
- d) *R. Nagender Yadav vs The State of Telangana, Criminal Appeal No. 2290 of 2022, on 15 December, 2022 (Para 17).*
- e) *Deepak Gaba and Ors. vs State of Uttar Pradesh and Anr., Criminal Appeal No. 2328 of 2022, on January 02, 2023 (Para 21, 24).*

32. The Supreme Court in ***Randheer Singh Vs. State of Uttar Pradesh & Ors., (2021) 14 SCC 626***, held:-

On noting several precedents the Court finally held:-

*“.....There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. **The High Court has, however, to see***

whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in Paramjeet Batra (supra) extracted above.”

33. In ***Paramjeet Batra vs State of Uttarakhand & Ors.***, Criminal Appeal No. 2069 of 2012 (arising out of SLP (Crl.) No. 7720 of 2011), on 14 December, 2012, the Supreme Court held:-

“7. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court.

8. As we have already noted, here the dispute is essentially about the profit of the hotel business and its ownership. The pending civil suit will take care of all those issues. The allegation that forged and fabricated documents are used by the appellant can also be dealt with in the said suit. Respondent 2’s attempt to file similar complaint against the appellant having failed, he has filed the present complaint. The appellant has been acquitted in another case filed by respondent 2 against him alleging offence under Section 406 of the IPC. Possession of the shop in question has also been handed over by the appellant to respondent 2. In such a situation, in our opinion, continuation of the pending criminal proceedings would

be abuse of the process of law. The High Court was wrong in holding otherwise.”

- 34. In the present case**, the dispute is clearly related to the process (election) to take charge of the management of the association. **Civil suits have been registered prior to filing of the present criminal case**, (the registration of which is also not in accordance with law as the case was registered without submission of an enquiry report as directed and also without the direction of the Magistrate to register an FIR). Be it noted that the endorsement dated 22.07.21 relating to registration of the case (FIR) is on the petition under Section 156(3) Cr.P.C. dated 24.06.2021 and not in respect of any earlier complaint filed by the complainant, as **argued by the learned counsel for the complainant/opposite party no. 3 herein. The dispute in this case is prima facie civil in nature and also subjudice before the civil courts prior to institution of the present criminal case.**
- 35. In *Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022)***, the Supreme Court held:-

*“15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*

“22. Before we enter into the facts of the present case it is necessary to consider the

ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in State of Karnataka v. L. Muniswamy (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :

‘7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it

would be impossible to appreciate the width and contours of that salient jurisdiction.'

41. *Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 which is to the following effect :*

'102. (7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.' Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of *State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335* but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings."

16. *The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this*

Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in **State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335** as under :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

- (4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- (7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

17. *The principles culled out by this Court have consistently been followed in the recent judgment of this Court in **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315.***

- 36.** The present case falls under category 1 and 7 of **Para 102 of Bhajan Lal (Supra).**

- 37. There being no prima facie materials on record to substantiate the allegations against the petitioner, the proceedings in the present case is thus liable to be quashed.**
- 38. CRR 2042 of 2021 is thus allowed.**
- 39.** The proceedings being Bidhannagar South P.S. FIR No. 209 of 2021, u/s 420/406/120B/34 of IPC, dated 22.07.2021 including the charge sheet therein corresponding to G.R. Case No. 815 of 2021, arising out of M.P. Case No. 37 of 2021, now pending before the Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas **is hereby quashed in respect of the petitioner Sukhdeb Saha.**
- 40.** All connected applications, if any, stand disposed of.
- 41.** Interim order, if any, stands vacated.
- 42.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 43.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)